

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VALERIE HIRATA; *et.al.*,
Plaintiffs,
vs.

SOUTHERN NEVADA HEALTH DISTRICT;
et.al.,
Defendants.

Case No. 2:13-cv-2302-LDG-VCF

REPORT & RECOMMENDATION

MOTION TO STRIKE (ECF No. 172)

Before the court are Hirata's motion to strike (ECF No. 172), the Health District's response (ECF No. 202), and Hirata's reply (ECF No. 204). For the reasons stated below, Hirata's motion should be granted.

I. Discussion

1. Expert Renee Rungis's Opinion Should Stricken

This court previously recommended that Hirata's aquatics expert Alison Osinski and the Health District's rebuttal aquatics expert William Rowley be stricken. (ECF No. 160) Since this court recommended that Osinski's opinion be stricken as unreliable, Rowley's rebuttal opinion should also be stricken as he no longer had an initial expert opinion to rebut. (*Id.*) In the same order, this court also recommended that Hirata's human resources Jay Finkelman be stricken. (*Id.*) Hirata now moves to strike the Health District's rebuttal human resources expert Renee Rungis.

A rebuttal expert's role is limited. "Rebuttal experts cannot testify in their parties' case-in-chief." *Amos v. Makita, U.S.A., Inc.*, Case No. 2:09-cv-1304-GMN-RJJ, 2011 WL 43092 at* 2 (D. Nev. Jan. 6, 2011). "Rebuttal expert testimony is limited to presenting evidence that is intended solely to contradict or rebut evidence of the same subject matter identified by an initial expert witness." *Id.*

1 Since this court has recommended that Dr. Finkelman's opinion be stricken, Rungis will not have
2 an initial expert to rebut. *Id.* And contrary to the Health District's position, Rungis may not convert her
3 rebuttal opinions into "primary" opinions and testify in the district's case-in-chief. *See id.* Given the
4 futility of permitting Rungis to remain in this action, this court should exclude Rungis's expert opinion.

5 ACCORDINGLY, and for good cause shown,

6 IT IS HEREBY RECOMMENDED that Hirata's motion to strike (ECF No. 172) be GRANTED.

7 IT IS SO ORDERED.

8 DATED this 24th day of August, 2016.

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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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